



## THE NAVAJO NATION

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# Council delegates attempt to discredit Navajo judge for decision in order to raise doubt in public's mind about tribal court system

*Speaker's press release says Kee Allen Begay, Young Jeff Tom's intent was to smear District Court Judge Carol Perry for granting motion their attorney sought*

**WINDOW ROCK, Ariz.** – Two Navajo Nation Council delegates have criticized a Navajo District Court judge for cancelling a hearing on a temporary restraining order that their own attorney asked for.

"I believe our court system is being abused and our judges are being persuaded to be on one side – this is not justice for the Navajo people," Many Farms delegate and Judiciary Committee Chairman Kee Allen Begay said in a news release issued by the Speaker's Office on Tuesday.

The criticism is the latest in a series of attacks on Navajo judges by Council delegates for decisions the Legislative Branch dislikes. This has led to proposed legislation to "reform" the Judicial Branch, and exposes a significant conflict of interest for the Judiciary Committee chairman.

The two delegates fault District Court Judge Carol Perry's order to cancel a May 7 hearing on whether to dismiss or make permanent a temporary restraining order to prevent the Election Administration from issuing candidate election packets for a Council of 88 delegates.

Cancelling the hearing meant an April 13 TRO remains in effect.

However, apparently unbeknownst to the two delegates, it was their own lawyer, Office of Legislative Counsel attorney Ron Haven, who asked Judge Perry to stay the hearing. Judge Perry simply ruled affirmatively on his motion.

In the news release, both Mr. Begay and Council Delegate Young Jeff Tom question Judge Carol Perry's judicial ability, accuse her of timidity and an inability to do her job, say she displayed doubt in her own decision-making, and "seriously

question her ability to interpret what the law says."

They allege that the Navajo people are not getting "quality justice" from the District Court only because the Election Administration is complying with a TRO to not issue election packets until the Navajo Nation Supreme Court rules on the question of whether there will be an election for a Council of 24 or 88 delegates, among other issues.

*Judiciary Committee Chairman Kee Allen Begay reveals prejudice and inherent conflict of interest by stating Navajo court system not impartial, and judges should be re-evaluated – all for political reasons.*

"The lower court should be ruling first and then it goes to the Supreme Court if appealed," Delegate Tom said. "Why is Judge Perry waiting?... She is discriminating."

The reason for the stay, according to Mr. Haven's motion, which was agreed to by plaintiff's lawyer James Fitting of Luebben, Johnson & Barnhouse of Albuquerque, is that the question before the District Court – whether the Election Administration should continue to issue Council delegate candidate packets for a Council of 88 members – would be answered by the Supreme Court in the case *Nelson v. Initiative Petition Committee and Dr. Joe Shirley*, and that the decision would soon be issued.

Mr. Haven is defending Navajo Election Administration Director Edison Wauneka in a lawsuit against him brought by Eddie Arthur, who is represented by Mr. Fitting.

Although Mr. Tom states that a lower court ruling should come before a higher court decision, the case before the Supreme Court had been appealed months before the suit brought by Mr. Arthur against the Election Administration was filed.

That case before the high court involves an appeal brought by Leupp resident Timothy Nelson of a decision by the Office of Hearing and Appeals in which he states he had been denied a hearing on the Dec. 15 election case.

Ironically, the Speaker's news release alleges that the Navajo People are being denied their right to vote even though Mr. Nelson's lawsuit ultimately seeks to void the Dec. 15, 2009, initiative special election – disenfranchising Navajo voters – in which voters overwhelmingly supported reducing the Council to 24 delegates.

Mr. Nelson's lawsuit was funded by a \$150,000 grant from the Speaker's Office and supported by numerous Council delegates who face losing their seats in an election of 24 delegates.

Mr. Begay reveals an inherent conflict of interest when he states that as chairman of the Judiciary Committee, which he notes has oversight of the Judicial Branch, he is bothered by the District Court's order, that justice is "being violated," that the court system "is being abused," and that Navajo judges are not being impartial in their decisions.

Mr. Begay accuses Judge Perry of "not doing her job," questions her ability to render a decision, and threatens her continuation on the bench – all for political reasons.

"Maybe the judge does not have the ability to make a ruling or interpret the law," he said. "Maybe it is time we re-evaluate our judges."

His statements raise the question of how, as Judiciary Committee chairman, Mr. Begay can carry out his oversight duties impartially when his prejudice against the Judicial Branch, the courts and judges, and his intention to discredit Judge Perry, has been so publicly stated.

His criticism forms the basis of reasons why Council delegates oppose recent court decisions – and the judges who issue them – that tend to go against their political and personal interests.

Further, Mr. Begay states in the news release that judges have authority to interpret the law even though in January the Council repealed the discretion of judges to take *Diné* Fundamental Law into consideration in their decisions as

they have for the past 50 years.

"Each judge is given the authority to interpret the law as an individual judge and not base their judgment merely on what the Supreme Court is going to say," Mr. Begay said. "It bothers me."

Despite Mr. Begay's misunderstanding of court procedure, in the two cases before the Supreme Court the Court asked attorneys to submit supplemental briefs on the legality and legitimacy of the Council's legislation pertaining to Fundamental Law and the elevation of power of the Chief Legislative Counsel to equal that of the Navajo Nation Attorney General.

On April 15, Judge Perry certified and submitted four questions to the Supreme Court, stating that the Council resolution to elevate the Chief Legislative Counsel "creates the potential of two conflicting legal authorities for the Navajo Nation, as emphasized in the President's veto message."

She wrote that the validity of the Council's resolution "is a matter of unsettled law which is essential to whether or not this District Court can issue a Preliminary Injunction in the this matter."

The four certified questions before the Supreme Court ask whether the resolution to elevate the Legislative Counsel's powers is invalid legislation because:

1. "...It creates (an) unworkable system of two potentially conflicting voices for the Navajo Nation?"
2. "...It is a violation of the separation of powers inherent in the three branch government?"
3. "...In this instance, it operates to deprive (Mr. Arthur) of fundamental rights which he is provided under (*Diné* Fundamental Law)...and...the Navajo Nation Bill of Rights?"
4. "...Of the inherent conflict in this legislation with the governmental concept which is embedded in *Diné* Fundamental Law?"

Delegate Tom said that if Judge Perry cannot make a decision – although she did by granting OLC's motion to stay the hearing – she should consider disqualifying herself from the case.

Inexplicably, the news release notes that it was Mr. Begay and Mr. Tom's intent to discredit Judge Perry in the eyes of the Navajo public, "in hopes the Navajo people will question the judge and the judicial system."